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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re LEE B., A Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VANCE B.,

Defendant and Appellant.

F042954

(Super. Ct. No. 01CEJ300335-3)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. A. Dennis Caeton, Judge.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Phillip S. Cronin, County Counsel, and Howard K. Watkins, Deputy County Counsel, for Plaintiff and Respondent.

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Vance B. appeals from an order terminating his parental rights (Welf. & Inst. Code, § 366.26) to his son, Lee.¹ Appellant contends the court erred by rejecting his

* Before Vartabedian, Acting P.J., Levy, J., and Gomes, J.

claim that termination would be detrimental to Lee because the child would benefit from a continued parent/child relationship. On review, we will affirm.

PROCEDURAL AND FACTUAL HISTORY

Respondent Fresno County Department of Children and Family Services (the department) detained Lee upon his birth in November 2001 and initiated these dependency proceedings due to his mother's substance abuse and his drug exposure. By June 2002, the Fresno County Superior Court adjudged the minor a dependent child of the court and removed him from parental custody. Although both parents had extensive substance abuse histories, the court extended reunification services to appellant while denying such services to the child's mother.

After approximately six months of reunification efforts, the court terminated reunification services for appellant and set a section 366.26 hearing to select and implement a permanent plan for Lee. Although he was participating in services and had maintained regular visitation with Lee, appellant was also using and testing positive for methamphetamine. The court nevertheless continued its weekly visitation order and authorized a bonding study.

In late November, a psychologist, Dr. Laura Geiger, evaluated the parents, Lee and his prospective adoptive parents for purposes of the bonding study. She then reported that Lee and his parents shared a parent/child relationship and Lee had a substantial positive emotional attachment to both parents. In her opinion, Lee "could be emotionally harmed if the relationship were terminated." She could not say, however, whether a continued relationship would outweigh the well-being Lee would gain in a permanent home with his prospective adoptive family. Lee had lived with that family since March 2002.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Anticipating the section 366.26 hearing originally scheduled for February 2003, the department submitted an assessment in which it recommended that the court find it likely Lee would be adopted and order parental rights terminated. Relevant to this appeal, the department reported appellant began to miss visits with his son starting in January 2003. This change appeared to coincide with appellant's graduation from a residential treatment program. The author of the assessment, who had also supervised visits since the court terminated services, observed that Lee consistently screamed and cried at the beginning of each visit. The child also clinged to his care provider in an apparent attempt to remain with her rather than go to his parents. While acknowledging the earlier bonding study, the assessment author reported he had not witnessed behaviors to indicate Lee had a significant bond with his parents.

The court continued the matter for a contested hearing in April 2003. In the interim, the author of the original assessment filed a March addendum report detailing his further objections to Dr. Geiger's November 2002 evaluation. He observed the mother was no longer visiting at all with Lee and appellant was recently attending only half of the supervised visits. Also, he mentioned that while Dr. Geiger reported the parents were well able to act in a parent role, Lee had never lived with either of them and all of their contact was under the supervision of a third party. According to the author, the parents' inconsistent and irresponsible behavior demonstrated that they would have difficulty in providing the stable and reliable parental relationship that Lee needed.

At the eventual section 366.26 hearing, the court heard testimony, in relevant part, on visitation, appellant's missed visits, and on the quality of the relationship between appellant and Lee. While there was conflicting evidence as to the percentage of visits appellant missed starting in January 2003, it was undisputed that he missed two visits in each of the following months: January, February and April 2003. One of the visits in April was cancelled due to Lee's illness. Appellant admitted he missed one visit due to his own illness in January and the other times due to work. He claimed, however, he

contacted the social worker at least one of those times. He acknowledged he did not talk with the social worker about trying to schedule visits at different times so that he would not miss them.

Appellant believed that with every visit his relationship with Lee grew “stronger and stronger.” In his opinion, Lee only showed a little uneasiness for a split second.

The foster mother testified that although Lee regularly cried and appeared clingy at the start of visits in 2003, there was never a time that he cried at the end of a visit.

Dr. Geiger testified that having reviewed the department’s assessment and addendum reports, her opinion regarding Lee and appellant’s relationship had changed. She predicted there was less of a relationship because visitation was no longer consistent and appellant had apparently only completed one-third to one-half of the visits he was allowed to have with Lee. She currently believed Lee would not be emotionally harmed to a severe or substantial degree if parental rights were terminated. If visits were not occurring and given Lee’s young age, there could not be a relationship. When asked would her current opinion be different assuming the father did not miss a substantial number of visits, Dr. Geiger replied “[i]f there were any missed visits I would have changed my opinion.” Her opinion was not based just on missed visits, it was also the lack of contact and fulfillment of responsibilities. There is also “the likelihood of detriment when a person says they’re going to be somewhere and a child is taken to meet with that parent and they don’t show up”

Finally, the author of the assessment and addendum reports testified that in his opinion and based on his observations of visits, there was no parent/child relationship between Lee and either his mother or father. The social worker also found nothing based on his observations that would be consistent with Dr. Geiger’s 2002 observations and opinions.

Following argument, the court found Lee adoptable and terminated parental rights. In the process, the court remarked that it was not persuaded by Dr. Geiger’s initial

opinion or how easily it changed. By the same token, the court found the observations and opinions of the social worker, who prepared the assessment and addendum, “most persuasive.”

DISCUSSION

Appellant contends the court abused its discretion by failing to find Lee would benefit from a continued relationship with appellant. He claims he presented evidence that he had maintained regular visitation and contact with Lee who would benefit from the continuing the relationship (§ 366.26, subd. (c)(1)(A)). On review of the record, we find no such abuse of discretion.

Appellant criticizes the juvenile court for not finding Dr. Geiger’s original observations and opinions persuasive. He also claims the social worker’s opinions were based on faulty information and skewed logic. By these arguments, appellant essentially asks this court to reweigh the evidence. This we cannot do. As an appellate court, we may not reweigh the evidence or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) Issues of fact and credibility are matters for the trial court alone. (*In re Amy M.* (1991) 232 Cal.App.3d 849, 860.)

Even assuming, for the sake of his argument, that appellant maintained regular and appropriate visitation with Lee throughout his dependency, the juvenile court was not compelled to find that termination would be detrimental to Lee.

“[T]he exception in section 366.26, subdivision (c)(1)(A), requires that the parent-child relationship promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A juvenile court must therefore: ‘balance[] the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.’ (*Id.* at p. 575.)” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.)

Having reviewed the record in light of the law, we conclude the juvenile court properly exercised its discretion in rejecting appellant's claim.

DISPOSITION

The order terminating parental rights is affirmed.